



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Eagan, McAllister Associates, Inc.

File: B-231983

Date: October 28, 1988

DIGEST

1. A protester whose best and final offer was rejected as technically unacceptable following discussions is an interested party to protest the adequacy of the discussions.
2. Even though a protester complained of a lack of specificity during discussions, a protest that discussions were not meaningful because agency failed to disclose all the deficiencies which were listed as reasons for rejection of proposal as technically unacceptable is timely when filed within 10 days of the date the protester learns of the rejection of its proposal.
3. Discussions are meaningful where agency imparted sufficient information to protester to afford it a fair and reasonable opportunity in the context of the procurement to identify and correct the deficiencies in its proposal.
4. A protester's allegation that it was misled during oral discussions into believing that its proposal's technical approach was not deficient is without merit, where the record indicates otherwise and the protester's best and final offer includes extensive revisions concerning its technical approach in response to the discussion topics.

DECISION

Eagan, McAllister Associates, Inc. (EMA), protests the rejection of its proposal as technically unacceptable under Lot I of request for proposals (RFP) No. N00421-87-R-0064 issued by the Department of the Navy, Naval Air Test Center, Naval Air Station, Patuxent River, Maryland, for engineering and technical services in support of the testing and evaluation of aircraft and shipboard weapons systems. EMA contends that its proposal should not have been rejected as technically unacceptable because the Navy failed to conduct

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technically unacceptable because the Navy failed to conduct meaningful discussions and failed to follow the RFP's stated evaluation criteria.

We deny the protest.

The RFP, issued on June 17, 1987, contemplated award of an indefinite quantity time and materials contract with fixed price labor rates and required submission of technical and price proposals. The contract was to be awarded in four separate lots. EMA's proposal was submitted for Lot I, which was set aside for small businesses.

The RFP's statement of work for Lot I, which basically requires the delivery of written reports and the furnishing of specified categories of labor, stated that the contractor would perform independent analyses and technical studies and provide engineering and technical services in the area of aircraft and shipboard weapon system testing for the activities of the Naval Air Test Center. The RFP listed nine primary task areas, each with detailed subtasks, relating to the general statement of work, and stated that the work under the contract was to include, but not be limited to, the nine primary areas.

Section L, "Instructions, Conditions and Notices to Bidders/Offerors," gave offerors extensive instructions on how to prepare their technical proposals. As a key element of the technical proposal, offerors were instructed to demonstrate technical comprehension and understanding of the services required by developing a detailed technical approach and staffing plan for a hypothetical scenario. The scenario for Lot I involved a major upgrade to an existing tactical aircraft including major structural improvements to extend service life and major weapon system improvement which would include both new government-furnished equipment and new contractor-furnished equipment. In other portions of their technical proposals, offerors were to: (1) demonstrate specific knowledge of the required services through discussion of previous support for similar efforts; (2) describe the management organization plan they would utilize; and (3) include the resumes of all personnel who would perform under the contract.

The RFP's Section M, "Evaluation Factors For Award," stated that technical proposals must give clear, detailed information sufficient to enable the government to make an evaluation based on the listed evaluation factors and that technical factors would be weighted one and one-half times more important than proposed price (a 60/40 ratio of technical factors to price). For Lot I, Section M listed

the following four technical evaluation factors, in descending order of importance, except that factors 3 and 4 are of equal importance: (1) technical approach; (2) corporate experience; (3) personnel, and (4) management organization plan. Each evaluation factor contained numerous subfactors with various weights. Section M2, "Award," as amended, stated that award was to be made to the offeror whose proposal offered "the greatest value" to the government in terms of technical capability and price, and that the government reserved the right to eliminate from further consideration those proposals which were considered to be technically unacceptable and not capable of being made acceptable without major revisions.

The Navy received three proposals for Lot I: from EMA, DCS Corporation, and J.F. Taylor, Inc. Evaluation of initial proposals yielded the following raw scores on a 60-point scale: DCS - 50.2; Taylor - 37.2; EMA - 28.1. EMA's price was second low. All offerors were found to be in the competitive range. Since it determined EMA's proposal to be technically unacceptable but capable of being made acceptable through discussions, the Navy included EMA in the competitive range.

The Navy then conducted discussions with the three offerors. By letter dated December 18, the Navy forwarded to EMA a list of seven technical deficiencies in its initial proposal which reflected the results of the evaluation. Oral discussions were held with EMA on January 4, 1988, at which time the Navy discussed the seven deficiencies identified in the December 18 letter.

On January 26, EMA submitted its first best and final offer (BAFO). On May 18, the Navy issued amendment No. 0005 to the RFP which converted the "minimum" personnel qualification requirements into "target" qualifications. A second round of BAFOs was requested by the Navy to allow offerors to revise their proposals in light of amendment No. 0005, but no other discussions were conducted. On June 1, EMA submitted its final BAFO containing only a revised price proposal, with the same technical proposal it had submitted on January 26.

Evaluation of BAFOs yielded the following technical point scores on a 60-point scale: DCS - 53.30; Taylor - 34.30; EMA - 23.00. EMA was, thus, ranked last technically by a significant margin as well as found technically unacceptable and incapable of being made acceptable without a major revision. EMA's revised price, however, was lowest of the three offerors.

On July 6, EMA received a letter from the Navy stating that EMA's proposal had been found technically unacceptable and that DCS was the apparent successful offeror. The Navy letter indicated that EMA's proposal was unacceptable due to deficiencies in the areas of: (1) airborne weapons systems, (2) carrier suitability, (3) reliability and maintainability, (4) avionics and flight systems, (5) corporate experience, (6) personnel, and (7) management organization.

EMA then filed its protest in our Office on July 14 complaining that "[a]t no time during the discussion did the Navy inform EMA of any deficiencies in its proposal regarding airborne weapons systems, carrier suitability, reliability and maintainability, avionics and flight systems and management organization." EMA admits that the Navy did discuss corporate experience and personnel, but, as EMA claims, "only in the most general terms." EMA also contends that the Navy failed to follow the RFP's evaluation criteria concerning personnel.

The Navy contends that EMA's protest should be dismissed because EMA is not an interested party and because EMA's protest was not timely filed. We disagree with both assertions.

The Navy contends that since EMA's proposal was rejected as technically unacceptable (and presumably no longer in the competitive range), EMA lacks the requisite direct and substantial economic interest to be an interested party within the meaning of our Bid Protest Regulations, 4 C.F.R. § 21.0 (1988). If EMA's protest that meaningful discussions were not conducted and its proposal was not properly evaluated were sustained, it is possible that EMA would be in line for award if discussions were reopened and its proposal was revised and ultimately reevaluated. EMA is thus an interested party for the purpose of protesting the rejection of its proposal and the conduct of discussions. See, e.g., Fairfield Machine Co., Inc., B-228015, B-228015.2, Dec. 7, 1987, 87-2 CPD ¶ 562.

The Navy also contends that EMA's ground of protest concerning lack of meaningful discussions is untimely since it was filed more than 10 working days after its basis was known or should have been known. The Navy asserts that this basis of protest arose on January 4 during oral discussions when EMA complained to the contracting officer of a lack of specificity in the discussions and the contracting officer declined to be more specific. We believe the Navy misconstrues the nature of EMA's protest. EMA is protesting that it was not told during discussions of all of the deficiencies which were listed as the reasons for rejection

of its proposal as technically unacceptable. EMA was, thus, not aware that meaningful discussions had not occurred until the Navy rejected its proposal for deficiencies which EMA alleges were not disclosed during discussions. See, e.g., Raytheon Ocean Systems Co., B-218620.2, Feb. 6, 1986, 86-1 CPD ¶ 134; Logistical Support, Inc.; Jets Services, Inc., B-208722, B-208722.2, Aug. 12, 1983, 83-1 CPD ¶ 202. EMA was notified by the Navy that its BAFO was being rejected as technically unacceptable on July 6. Since EMA's protest was filed within 10 days of that date, its protest concerning lack of meaningful discussions is timely.

EMA contends that the Navy failed to disclose during discussions all the deficiencies in its proposal which formed the basis of the proposal's rejection.

One of the basic functions of discussions is to disclose deficiencies. In evaluating whether there has been sufficient disclosure of deficiencies, the focus is not on whether the agency described the deficiencies in such intimate detail that there could be no doubt as to their identification and nature, but whether the agency imparted sufficient information to the offeror to afford it a fair and reasonable opportunity in the context of the procurement to identify and correct the deficiencies in its proposal. See, e.g., Structural Analysis Technologies, Inc., B-228020, Nov. 9, 1987, 87-2 CPD ¶ 466. The degree of specificity necessary in the disclosure of deficiencies to meet the requirement for meaningful discussions is, thus, not a constant, but varies with the context of individual procurements. While an agency is not necessarily required to remind an offeror to submit certain information with its final offer when that information is specifically called for in the solicitation, the agency discussions should be more specific in their identification of deficiencies if the solicitation is not as specific in its identification of government requirements. See Joule Technical Corp., B-197249, Sept. 30, 1980, 80-2 CPD ¶ 231. There is no requirement that agencies conduct all-encompassing discussions; rather, agencies are only required to reasonably lead offerors into those areas of their proposals needing amplification given the context of the procurement. Northwest Regional Educational Laboratory, B-222591.3, Jan. 21, 1987, 87-1 CPD ¶ 74.

As we indicated above, for Lot I the RFP listed nine primary tasks, with several specific subtasks, and gave offerors extensive instructions on how to prepare their offer and exhibit the technical comprehension necessary to perform those tasks. The RFP also required offerors to develop a detailed technical approach and staffing plan for a

hypothetical scenario involving a major upgrade to an existing tactical aircraft. It is apparent that the purpose of this sample task scenario was to allow offerors to demonstrate their level of understanding of the work required under the contract, since the hypothetical scenario required delivery of the kind of written report which the contractor would ultimately deliver under the contract.^{1/}

The Navy's list of seven written discussion topics, sent to EMA in a letter dated December 18, were as follows:

"TECHNICAL APPROACH AND CORPORATE EXPERIENCE

1. Please expand on your technical expertise and experience in aircraft and aircraft systems and associated DT&E [development, test and evaluation] as defined in the RFP. Elaborate on how you will apply this experience and expertise in accomplishing the specific Lot I tasks.
2. Reevaluate the personnel assignments in the scenario and the need for various labor categories.
3. Your proposal either fails to discuss or provides insufficient information on several sub-tasks. Please amplify.
4. Readdress the T&E requirements associated with the new wing in the scenario.

^{1/} The sample task scenario EMA elected to use in its proposal was structured around the Navy's participation in the development effort for the A-6X aircraft upgrade program and consisted of three major upgrade elements: (1) the incorporation of a new composite wing for replacing the older traditional A-6E wing structure now exhibiting signs of fatigue and cracks in the current fleet; (2) the incorporation of a state-of-the-art government-furnished equipment digital cockpit and heads-up display system; and (3) the incorporation of a contractor-furnished equipment radar warning receiver and jammer system.

"PERSONNEL

5. Request you readdress your resumes to clearly show how each individual satisfies the specific requirements stated in the RFP and to identify specialized experience applicable to Lot I tasks.

"MANAGEMENT ORGANIZATION PLAN

6. Please reconsider and readdress your distribution of labor hours.

7. Reassess your lead time for new staffing."

The record shows that these written discussion topics fully addressed all of the deficiencies in EMA's initial proposal which the Navy's evaluation disclosed. Further, EMA's BAFO included more than 200 pages of revisions covering each of the written discussion topics and including discussion of all of the specific areas which were subsequently listed in the Navy's July 6 rejection letter as remaining deficient. The written discussion topics, therefore, clearly led EMA into the areas of its proposal which were found to be deficient by the Navy, including the two areas considered most deficient: technical approach and corporate experience. Moreover, the Navy states that it verbally elaborated on these deficiencies and has provided notes memorializing what was to be said during oral discussions.

Given the detailed requirements of the RFP, the specific instructions to offerors on how to demonstrate the comprehension necessary to perform the contract and the extensive revisions in EMA's BAFO addressing the identified deficiencies, we find that, based on the written discussion topics alone, the Navy conducted meaningful discussions, since those written topics imparted sufficient information to EMA to afford it a fair and reasonable opportunity to correct the deficiencies in its proposal. The Navy was not required to describe the deficiencies in EMA's proposal in such intimate detail that there could be no doubt as to their identification and nature. If the Navy had so "spoon fed" EMA, it may have led EMA to simply repeat back the Navy's concerns point by point, which would defeat the primary purpose of the sample task scenario--to test the offeror's demonstrated understanding of the technical requirements of the contemplated contract.

EMA contends, however, that during oral discussions it was somehow misled into believing that its proposal's technical approach was not deficient since, as EMA claims, it was told by the Navy that only a "very few" of the Lot I subtasks

needed further amplification and that the only deficiencies in its proposal were in the areas of "corporate experience, the personnel resumes, and labor-hour distribution."

We find these allegations are not supported by the record. Not only does the Navy deny EMA's allegations, it has provided notes memorializing what was to be verbally conveyed to EMA during oral discussions and a statement by the contracting officer that she is certain that the contents of the notes were fully conveyed to EMA. Even though EMA denies that it was read the contents of those notes, in its protest it recounts other statements made by the contracting officer that would indicate that, in fact, the contents of those notes were conveyed to EMA.^{2/} Further, EMA does not provide any statements or affidavits from its representatives who attended the oral discussions which would verify its assertions. Moreover, the extensive revisions in its BAFO concerning its technical approach also belie EMA's assertion that it was misled during oral discussions into believing that its proposal was not deficient in its technical approach. Therefore, we find EMA's allegations of misleading oral discussions are not supported by the record.

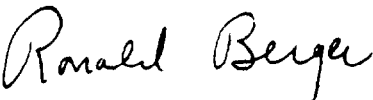

EMA makes an alternative contention that, even if discussions were meaningful, based on EMA's "thorough and complete response" to the Navy's discussion topics, the Navy's finding of deficiencies in its BAFO was clearly an unreasonable evaluation of its proposal. However, to support this contention, EMA only argues that since amendment No. 0005 to the RFP changed the "minimum" personnel qualification requirements to "target" qualifications, the Navy's evaluation of EMA's personnel was faulty, since the amendment, in effect, "eliminated all personnel requirements." EMA contends that the Navy could not, as a result, find its proposal deficient in the area of personnel.

We disagree. Amendment No. 0005 only changed the RFP's personnel qualifications from minimums to targets; it did

^{2/} EMA states that during oral discussions, "the Navy indicated to EMA that (1) its proposed team lacked broad experience in Testing and Evaluation (T&E), and in the T&E of airborne systems in particular; (2) the assignment of personnel needed to be clarified; (3) additional information was needed on 'some subtask areas'; (4) T&E of the 'new wing' needed to be clarified; (5) many of EMA's resumes were weak or inadequate; and (6) EMA's labor hour distribution needed to be corrected." These statements from EMA parallel the contents of the contracting officer's notes.

not eliminate these qualifications entirely. Nor were the RFP's evaluation factors concerning personnel eliminated or modified. It is apparent that those evaluation factors were still valid, since they were now to be used to measure an offeror's ability to satisfy "target" personnel qualifications rather than "minimum" requirements. In any case, although offerors were also given an opportunity to submit revised BAFOs in response to amendment No. 0005, EMA revised only its price proposal and left its technical proposal unchanged. Our review indicates that the Navy's evaluation of EMA's personnel was entirely consistent with the RFP's evaluation criteria.

The protest is denied.


 James F. Hinchman
General Counsel